

Before the
Administrative Hearing Commission
State of Missouri



TERESA SJOSTROM,

Petitioner,

vs.

DIRECTOR OF DEPARTMENT OF
INSURANCE, FINANCIAL INSTITUTIONS
AND PROFESSIONAL REGISTRATION,

Respondent.

No. 12-1263 DI

DECISION

The Director of the Department of Insurance, Financial Institutions and Professional Registration (the “Director” and the “Department,” respectively) had cause to deny Teresa Sjostrom an individual insurance producer license because she pled guilty to two felony counts and committed a crime involving moral turpitude.

Procedure

On July 12, 2012, Sjostrom filed a complaint to appeal the Director’s June 7, 2012 decision denying her application for an individual insurance producer license. The Director filed an answer to the complaint on August 9, 2012, and on September 18, 2012, filed a motion for summary decision and suggestions in support. We gave Sjostrom until October 3, 2012 to respond to the motion, but she did not do so, other than to state that she disagrees with the motion.

Regulation 1 CSR 15-3.446(6) provides that we may decide this case without a hearing if the Director establishes facts that Sjostrom does not dispute and entitle the Director to a favorable decision. Facts may be established through admissible evidence. 1 CSR 15-3.446(6)(B). Sjostrom does not dispute the evidence the Director submitted in support of his motion, which includes certified copies of court records and the Director's authenticated records. Therefore, we make our findings of fact from the undisputed evidence submitted by the Director in support of his motion.

Findings of Fact

1. On October 22, 2011, Sjostrom submitted a Uniform Application for Individual Producer License/Registration (the "Application") to the Department. The Application indicates Sjostrom was formerly known as "Teresa Mae Ovsak."
2. In the section of the Application entitled "Background Questions," Background Question No. 1 asks, "Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?"
3. Sjostrom responded "yes" to Background Question No. 1, and attached a "Short Form Application for Written Consent to Engage in the Business of Insurance Pursuant to 18 U.S.C. § 1033 and 1034" ("Request for 1033 Waiver") with her Application.¹ Her Request for 1033 Waiver disclosed the following criminal history:
 - a. Convicted in the Eastern District of Missouri Federal Court on May 4, 2011 of filing fraudulent tax returns for 2004 and 2005, totaling \$76,060[.]
 - b. Currently under 1 year of probation until May 3, 2012[.]²

¹ 18 U.S.C. § 1033 prohibits certain individuals from engaging in the business of insurance, including individuals convicted of a criminal felony involving dishonesty or breach of trust. A Request for 1033 Waiver, if approved by the Director, grants written consent to such individuals to engage in the business of insurance pursuant to 18 U.S.C.(e)(2). Because Sjostrom submitted a Request for 1033 Waiver along with the Application, for purposes of our decision, we consider it part of her Application.

² Respondent's Exhibit 1B.

4. Sjostrom did not provide full disclosure of all her criminal convictions.
5. In her Request for 1033 Waiver, Sjostrom stated, under penalty of law, “There is not now and has never been a question of my integrity or morals[.]”³
6. On June 7, 2012, the Director entered an order refusing to issue an insurance producer license (“Refusal Order”) against Sjostrom, alleging grounds for discipline pursuant to § 375.141.1(1), (3), and (6). The Director also refused Sjostrom’s Request for 1033 Waiver.
7. On July 12, 2012, Sjostrom filed a complaint with this Commission seeking review of the Director’s decision refusing her Application and Request for 1033 Waiver.

Sjostrom’s Criminal History

8. On December 6, 2005, the St. Charles County Prosecuting Attorney filed an information against Sjostrom, then known as Teresa Mae Ovsak, alleging she committed the class C felony of forgery, in violation of § 570.090.⁴ Ovsak/Sjostrom entered a guilty plea to the charge on February 16, 2006, received a suspended imposition of sentence, and was placed on probation for a period of five years.
9. Sjostrom did not disclose her February 16, 2006 guilty plea to the class C felony of forgery on her Application or Request for 1033 Waiver.
10. On April 8, 2010, an indictment was filed against Sjostrom, then known as Teresa Mae Ovsak, in the United States Court, Eastern District of Missouri, alleging in pertinent part:

[Sjostrom] did willfully make and subscribe and file with the Internal Revenue Service a Form 1040 for the tax year 2004, which was verified by a written declaration that it was made under the penalties of perjury, which she did not believe to be true and correct as to every material matter[.]

In violation of title 26, United States Code, Section 7206(1).

³ Respondent’s Exhibit 1B.

⁴ Statutory references are to the Revised Statutes of Missouri (Supp. 2012), unless otherwise noted.

* * *

[Sjostrom] did willfully make and subscribe [*sic*] file with the Internal Revenue Service a Form 1040 for the tax year 2005, which was verified by a written declaration that it was made under the penalties of perjury, which she did not believe to be true and correct as to every material matter[.]

In violation of title 26, United States Code, Section 7206(1).⁵

11. On February 28, 2011, Ovsak/Sjostrom pled guilty to two counts of Felony Filing a False Income Tax Return for tax years 2004 and 2005, in violation of 26 USC § 7206(1), in accordance with a plea agreement. The federal court entered a judgment against Ovsak/Sjostrom on May 4, 2011, and sentenced her to “time served,” placed her on supervised probation for a term of one year, ordered her to pay restitution of \$76,060 to the Internal Revenue Service, and assessed \$200 in costs against her.
12. By the terms of the plea agreement, Ovsak/Sjostrom admitted she knowingly violated 26 USC § 7206(1), and the following facts:⁶
 - a. On or about April 15, 2005, [Sjostrom] prepared an income tax return for the tax year 2004 claiming she had received \$242,673 in wages during 2004 from AOL.com, had paid \$58,974 in tax withholding payments and was entitled to a refund of \$37,085. [Sjostrom] received said refund from the IRS. However, in fact, as [Sjostrom] knew, [Sjostrom] had not been employed by AOL.com during 2004 and had not made tax withholding payments. Therefore, [Sjostrom] was not entitled to a refund from the IRS. [Sjostrom’s] false return was supported by a counterfeit W-2 Form from AOL.com reflecting wages claimed in said return.
 - b. Similarly, on or about April 17, 2006, [Sjostrom] filed a false income tax return for tax year 2005, this time claiming \$256,453 in wages, \$63,913 in withholding and a refund of \$38,975, which she received from the IRS. This return was also supported by a false W-2 Form from AOL.com. Both returns were signed by [Sjostrom] under penalties of perjury.
 - c. [Sjostrom] did not have any earned income for the years in question.
 - d. The total amount of loss to the IRS is \$76,060.
13. By the terms of her plea agreement, Ovsak/Sjostrom also admitted the following elements of the crime with which she was charged:⁷

⁵ Respondent’s Exhibit 2.

⁶ Respondent’s Exhibit 3.

⁷ Respondent’s Exhibit 3.

- a. [She] filed an income tax return which was signed under penalties of perjury;
- b. [She] reported material information on said return which [she] did not believe to be true, and which was not true;
- c. [She] did so knowingly.

Conclusions of Law

We have jurisdiction over the case. § 621.045. As noted above, our Regulation 1 CSR 15-3.446(6) provides that we may decide this case without a hearing if the Director establishes facts Sjostrom does not dispute and entitle the Director to a favorable decision. *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 380-82 (Mo. banc 1993). When deciding a motion for summary decision, we view the facts and the inferences from those facts in the light most favorable to the non-moving party. The burden is on the movant to establish both the absence of a genuine issue of material fact and that it is entitled to a favorable determination as a matter of law. *Ibid.*, at 376.

The Director maintains his refusal to issue a license to Sjostrom is established by § 375.141.1(1), (3), and (6), which provide in pertinent part:

1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

* * *

(1) Intentionally providing materially incorrect, misleading, incomplete or untrue information in the license application;

* * *

(3) Obtaining or attempting to obtain a license through material misrepresentation or fraud;

* * *

(6) Having been convicted of a felony or crime involving moral turpitude[.]

§ 375.141.1(1) – Providing materially incorrect information on the Application

The Director argues that, by including some, but not all, of her criminal history on her Application, Sjostrom intentionally provided materially incorrect, misleading, incomplete or

untrue information. “Material” means having real importance or great consequences.

MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 765 (11th ed. 2004). A

“misrepresentation” is a falsehood or untruth made with the intent of deceit rather than inadvertent mistake. *Hernandez v. State Bd. of Registration for the Healing Arts*, 936 S.W. 2d 894, 899, n. 3 (Mo. App. W.D. 1997).

We have found Sjostrom failed to disclose her 2006 guilty plea to forgery, a Class C felony. The omission of that felony is certainly material, but the record does not persuade us the omission was also intentional. Direct evidence of intent is rarely susceptible to direct proof and, therefore, must generally be established by circumstantial evidence. *State v. Agee*, 37 S.W.3d 834, 837 (Mo. App., S.D. 2001). Sjostrom’s Application did disclose two other felony convictions. Whether she intended to deceive the Director by failing to include a third felony conviction is a question of fact that must be established by additional evidence.

§ 375.141.1(3) - Attempting to obtain a license
through material misrepresentation

The Director further contends Sjostrom’s omission of her 2006 forgery conviction was an attempt to obtain licensure through a material misrepresentation of her criminal history, or by fraud. However, as noted above, misrepresentation requires evidence of Sjostrom’s mental state, and the record before us does not support such a finding.

Similarly, the record contains no evidence of fraud in Sjostrom’s having submitted an incomplete application. Fraud is an intentional perversion of truth to induce another, in reliance on it, to part with some valuable thing belonging to him. *State ex rel. Williams v. Purl*, 128 S.W. 196, 201 (Mo. 1910). The Director has failed to establish Sjostrom’s intent, and without that fact, we can find no cause to deny her application under this subsection.

§ 375.141.1(6) – Conviction of a felony or crime of moral turpitude

The certified court records offered by the Director establish that Sjostrom pled guilty to two counts of felony filing of false income tax returns in federal court, and to the Class C felony of forgery. Therefore, cause exists to refuse her a license pursuant to § 375.141.1(6). The Director further argues Sjostrom's crime involved moral turpitude, providing an additional basis for denial of her application under this subsection. We agree.

Crimes of moral turpitude involve:

an act baseness, vileness, or depravity in the private and social duties which a man owes to her fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything "done contrary to justice, honesty, modesty, and good morals."

In re Frick, 694 S.W.2d 473, 479 (Mo. banc. 1985). In two consecutive years, Sjostrom knowingly prepared and submitted false W-2's and federal income tax returns to the IRS, and fraudulently collected a total of \$76,060 in tax refunds. Without question, her actions were contrary to honesty, justice, and good morals. We find her crime involved moral turpitude.

Director's Discretion to Deny License under § 385.209.2

We have found cause to deny Sjostrom's Application under § 375.141.1(6). However, § 374.051.1 provides, in relevant part:

Any applicant refused a license or the renewal of a license by order of the director under sections 374.755, 374.787, and 375.141 may file a petition with the administrative hearing commission alleging that the director has refused the license. The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law in determining whether the applicant may be disqualified by statute. *Notwithstanding section 621.120, the director shall retain discretion in refusing a license or renewal and such discretion shall not transfer to the administrative hearing commission.*

(Emphasis added.) Having found cause for denial of Sjostrom's Application under § 375.141.1(6), we must uphold the Director's decision.

Summary

As the Director had cause to deny Sjostrom an individual producer license pursuant to § 375.141.1(6), we partially grant the Director's motion for summary decision. Because we defer to the Director's decision denying her application, this fully disposes of Sjostrom's appeal. We cancel the hearing.

SO ORDERED on April 10, 2013.

/s/ Mary E. Nelson

MARY E. NELSON
Commissioner